

1                   BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION

2                               STATE OF MONTANA

3                                       NANCY KEENAN

4                               \* \* \* \* \*

5   EDWARD A. THOMAS,                               )  
6                   Appellant,                               )       OSPI 174-89  
7                   v.                               )       DECISION AND ORDER  
8   TRUSTEES, GALLATIN COUNTY                               )  
9   SCHOOL DISTRICT NO. 44 (Belgrade),                               )  
10                   Respondents.                               )

11                               \* \* \* \* \*

12                               STATEMENT OF THE CASE

13       Edward A. Thomas was a tenured teacher in Gallatin County  
14   employed in the Belgrade school system.   In February 1989  
15   Superintendent Erickson recommended to the Board of Trustees that  
16   Thomas be dismissed because of unfitness and violation of board  
17   policy.   Following a hearing the trustees voted to accept  
18   Superintendent Erickson's recommendation to dismiss Thomas.  
19   Thomas appealed his dismissal to the Gallatin County  
20   Superintendent of Schools in accordance with Section 20-3-210,  
21   MCA, on March 17, 1989, and a hearing was held June 19 and 20,  
22   1989.   On July 21, 1989, County Superintendent Brown issued her  
23   Findings of Fact, Conclusions of Law and Order affirming Thomas'  
24   dismissal.   Thomas appealed the decision to State Superintendent  
25   Keenan on August 8, 1989.

1 The issues on appeal are:

2 1. Whether there is reliable, probative and substantial  
3 evidence on the record which identify actions of Thomas resulting  
4 in unfitness to teach and violation of the adopted policies of  
5 the trustees.

6 2. Whether the County Superintendent erred in concluding that  
7 the dismissal was made with good cause.

8 DECISION AND ORDER

9 The State Superintendent of Public Instruction has  
10 jurisdiction of this appeal in accordance with Section 20-3-107,  
11 MCA.

12 Having reviewed the complete record including the transcript  
13 and exhibits presented at the hearing before the County  
14 Superintendent, and having read the briefs of the parties, this  
15 State Superintendent affirms the decision of the County  
16 Superintendent.

17 MEMORANDUM OPINION

18 The State Superintendent has adopted the standard of review  
19 set forth in Section 10.6.125, ARM. When reviewing a decision of  
20 a County Superintendent, this Superintendent must affirm the  
21 findings unless they are clearly erroneous. If the findings of  
22 fact are supported by reliable and substantial evidence, she may  
23 not reweigh the evidence. Harris v. Bauer, 749 P.2d 1068, 1071,  
24 45 St. Rptr. 147, 151 (1988); City of Billings v. Billings  
25

1 Firefighter, 200 Mont 421, 430, 651 P.2d 627, 632, (1982) The  
2 appellant for review bears the burden of showing that they have  
3 been prejudiced by a clearly erroneous ruling. Findings are  
4 binding on the reviewer and not "clearly erroneous" if supported  
5 by "substantial credible evidence" in the record. Id. This has  
6 been further clarified to mean that a finding is "clearly  
7 erroneous" if a "review leaves the court with the definite and  
8 firm conviction that a mistake has been committed." Wage Appeals  
9 v. Bd. of Personnel Appeals, 676 P.2d 194, 198 (1984). A  
10 conclusion of law is controlling if it is neither arbitrary nor  
11 capricious. City of Billings, 651 P.2d at 632.

12 The County Superintendent, aided by competent legal counsel,  
13 carefully weighed the extensive testimony and exhibits and made  
14 factual conclusions based on the evidence of the entire record.  
15 This Superintendent may not substitute her judgment for that of  
16 the County Superintendent as to the weight of the evidence. Where  
17 the record contains conflicting testimony, credibility is decided  
18 by the finder of facts. Frazer School District No. 2 v. Flynn,  
19 732 P.2d 409, 44 St. Rptr. 248 (1987). The finder of fact in the  
20 case before me is the County Superintendent. As the trier of  
21 fact, she was in a position to hear and evaluate the evidence  
22 given by the various witnesses and to judge the credibility of  
23 those witnesses. Yanzick v. School District No. 23, Lake County,  
24 196 Mont. 375, 641 P.2d 431 (1982). She stated that "....the  
25

1 students all came across as sincere, credible witnesses who merely  
2 related what they saw and what happened." Findings, page 10.

3 Error is alleged in the amount of weight the County  
4 Superintendent placed on Thomas' evaluations. Clearly, the  
5 evaluations were not ignored, Findings, page 9, as was the case  
6 in Board of Trustees v. Anderson, 45 St. Rptr. 1232, 757 P.2d  
7 1315 (1988) cited by Appellant. The County Superintendent  
8 considered the entire record, including the evaluations.

9 This office and the courts continue to recognize that a  
10 balancing of the protected rights of tenure and the trustees'  
11 right to maintain the integrity of the schools must be a careful  
12 one. A teacher must have the benefit of having all the available  
13 evidence properly considered and weighed. There is no precise  
14 formula for what constitutes "good cause" for teacher termination.  
15 A great deal of deference must be given to the findings of the  
16 County Superintendent. The record clearly indicates that she  
17 heard and weighed the testimony of all twenty-three witnesses and  
18 twenty-one exhibits. Review of the record finds substantial  
19 evidence existed to support the findings and to conclude as a  
20 matter of law that Thomas' actions were unjustified and a  
21 violation of school policy. Based upon the findings, the County  
22 Superintendent concluded as a matter of law that the trustees had  
23 met the burden of proof of a preponderance of the evidence as to  
24 good cause sufficient to dismiss a tenured teacher. Thomas has  
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1 failed to clearly show that the County Superintendent made  
2 mistakes in that determination that have substantially prejudiced  
3 his rights.

4 DATED this 23 day of March, 1990.

5  
6 Nancy Keenan  
NANCY KEENAN

7 10.6.128 APPELLATE PROCEDURE - DECISION (1) The decision and  
8 order of the superintendent of public instruction shall be final,  
9 subject to the proper legal remedies in the state/federal courts.  
10 Such proceedings shall be commenced no later than 60 days after  
the date of the decision and order of the state superintendent of  
public instruction.

11 CERTIFICATE OF SERVICE

12 THIS IS TO CERTIFY that on the 23<sup>rd</sup> day of March, 1990, a  
13 true and exact copy of the foregoing DECISION AND ORDER was  
mailed, postage prepaid to:

14 Emilie Loring  
15 Hilley & Loring  
500 Daly Avenue  
Missoula, MT 59801

16 Martin Lambert, Chief Deputy  
17 Gallatin County Attorney's Office  
Law and Justice Center  
615 South 16th Avenue  
18 Bozeman, MT 59715

19 Mary Ann Brown  
20 County Superintendent  
Gallatin County Courthouse  
21 Bozeman, MT 59715

22 Linda V. Brandon  
Linda V. Brandon  
23 Paralegal Assistant  
Office of Public Instruction  
24  
25